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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Rahul L. Shah

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EXAMINER

JOO, JOSHUA

ART UNIT

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/670,550	<b>Applicant(s)</b> SHAH, RAHUL L.	
	<b>Examiner</b> JOSHUA JOO	<b>Art Unit</b> 2154	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 February 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-42 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

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### ***Detailed Action***

1. This Office action is in response to communication dated 02/11/2008.

Claims 1-42 are presented for examination.

### **Response to Arguments**

2. Applicant's arguments with respect to claims 1-42 have been considered but are moot in view of the new ground(s) of rejection.

### **Double Patenting**

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1, 15, and 29 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 8, 20, 27, 39, and 46 of copending Application No. 10/670849. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1 and 8 of the copending application anticipates claim 1 of the instant application. Claims 20, 27, 39, and 46 of the copending application comprise similar features of claims 1 and 8, and anticipates claims 15 and 29 of the instant application.

<b>Instant Application Claim 1</b>	<b>Copending application #10/670849 Claim 1</b>
A method comprising: detecting a computer system activity level indicative of computer system activity	A method comprising: receiving an instant messaging operation directed to a given user, wherein said given user is not offline;
said activity level exceeds an activity threshold in response to said detecting	determining a presence state of an instant messenger in response to receiving said instant messaging operation, wherein <u>said presence state corresponds to said given user</u>
transitioning a presence state specific to an instant messenger client to a busy state in response to determining that said activity level exceeds said activity threshold, wherein said presence state corresponds to a given user	<b>Claim 8</b> The method as recited in claim 1, further comprising: <u>detecting a computer system activity level indicative of computer system activity</u>
	determining whether <u>said activity level exceeds an activity threshold in response to said detecting; and</u>
	<u>transitioning said presence state of said instant messenger client to a busy state in response to determining that said activity level exceeds said activity threshold, wherein said presence state corresponds to a given user.</u>

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

5. Claims 1, 15, and 29 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 8, 11, 18, 21, and 28 of copending Application No. 10/670549. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1 and 8 of the copending application anticipates claim 1 of the instant application.

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Claims 11, 18, 21, and 28 of the copending application comprise similar features of claims 1 and 8, and anticipates claims 15 and 29 of the instant application.

<b>Instant Application Claim 1</b>	<b>Copending application #10/670549 Claim 1</b>
A method comprising: detecting a computer system activity level indicative of computer system activity	A method comprising: storing schedule information corresponding to a given user, wherein said schedule information is indicative of an activity status of said given user at a given time;
said activity level exceeds an activity threshold in response to said detecting	querying said schedule information; and  if a current presence state of an instant messenger does not correspond to said activity status indicated by said schedule information, assigning a different presence state that corresponds to said activity status in response to said querying, wherein said current presence state and said different presence state each correspond to said given user.
transitioning a presence state specific to an instant messenger client to a busy state in response to determining that said activity level exceeds said activity threshold, wherein said presence state corresponds to a given user	<b>Claim 8</b> The method as recited in claim 1, further comprising:
	<u>detecting a computer system activity level indicative of computer system activity</u>
	<u>determining whether said activity level exceeds an activity threshold in response to said detecting; and</u>
	<u>transitioning a presence state of said instant messenger client to a busy state in response to determining that said activity level exceeds said activity threshold, wherein said presence state corresponds to a given user.</u>

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

### **Specification**

6. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o).

i) Regarding claims 15-28, “computer-accessible storage medium”.

### **Claim Rejections - 35 USC § 103**

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-5, 8-9, 12-19, 22-23, 26-33, 36-37, 40-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barsness, US Patent #7,337,210 (Barsness hereinafter), in view of Boni et al. US Patent #7,317,716 (Boni hereinafter).

9. As per claims 1 and 15, Barsness teaches substantially the invention as claimed including a method, comprising:

detecting a computer system activity level indicative of computer system activity (col. 11, lines 17-24. Data is received as a result of activity, i.e. user input.);

determining whether said activity level exceeds an activity threshold in response to said detecting (col. 11, lines 29-37. Determine that activity is not within specified period, i.e. exceeds specified period.); and

transitioning a presence state specific to an instant messenger client to a “state” in response to determining that said activity level exceeds said activity threshold, wherein said presence state

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corresponds to a given user (col. 12, lines 20-32. Set state to inactive or active after determining that activity is not within a specified period.).

10. Barsness does not specifically teach of transitioning to a busy state in response to determining activity.

11. Boni teaches a similar system for automatically determining presence status, wherein presence status is set to “busy” in response to determining activity (col. 2, lines 44-47; col. 9, lines 40-49, col. 13, lines 1-6).

12. It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings to transition to a busy state as taught by Boni in response to determining that activity level exceeds activity threshold as taught by Barsness. The motivation for the suggested combination is that Boni’s teachings to set a state to busy would allow propagation of different statuses that are descriptive of the client, and a busy status would allow a client to be undisturbed during activity.

13. As per claim 29, Barsness teaches substantially the invention as claimed including a system, comprising:

a computer system (fig. 3. computer system); and

an instant messenger client software module configured to execute on said computer system (col. 8, lines 19-26. Instant messaging client application in memory.);

wherein said instant messenger software module is further configured to:

detect a computer system activity level indicative of computer system activity (col. 11, lines 17-

24. Data is received as a result of activity, i.e. user input.);

determining whether said activity level exceeds an activity threshold in response to said detection (col. 11, lines 29-37. Determine that activity is not within specified period, i.e. exceeds specified period.); and

transition a presence state specific to an instant messenger client to a "state" in response to said determination that said activity level exceeds said activity threshold, wherein said presence state corresponds to a given user (col. 12, lines 20-32. Set state to inactive or active after determining that activity is not within a specified period.).

14. Barsness does not specifically teach of transitioning to a busy state in response to determining activity.

15. Boni teaches a similar system for automatically determining presence status, wherein presence status is set to "busy" in response to determining activity (col. 2, lines 44-47; col. 9, lines 40-49, col. 13, lines 1-6).

16. It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings to transition to a busy state as taught by Boni in response to determining that activity level exceeds activity threshold as taught by Barsness. The motivation for the suggested combination is that Boni's teachings to set a state to busy would allow propagation of different statuses that are descriptive of the client, and a busy status would allow a client to be undisturbed during activity.

17. As per claims 2, 16, and 30, Barsness and Boni taught the method, computer-accessible storage medium, and the system as recited in claims 1, 15, and 29 of determining whether to set the presence state to busy state. Barsness and Boni further teach comprising:

determining whether said activity level does not exceed said activity threshold subsequent to monitoring said presence state to said busy state (col. 11, lines 19-27. Determine that activity is within activity period.); and

transitioning said presence state of said instant messenger to an online state in response to determining that said level of computer system activity does not exceed said activity threshold (col. 11, lines 33-37. Set to "active").



18. As per claims 3, 17, and 31, Barsness teaches the method, computer-accessible storage medium, and the system as recited in claims 1, 15, and 29 wherein said computer system activity comprises keyboard activity (col. 11, lines 19-21. Keyboard input.).

19. As per claim 4, 18, and 32, Barsness teaches the method, computer-accessible storage medium, and the system as recited in claims 1, 15, and 29, wherein said computer system activity comprises mouse activity (col. 11, lines 19-21. Mouse input.).

20. As per claims 5, 19, and 33, Barsness does not specifically teach the method, computer-accessible storage medium, and the system as recited in claims 1, 15, and 29, wherein said computer system activity comprises one or more simultaneous instant messenger sessions.

21. Boni teaches a similar system for automatically determining presence status, wherein the activity for setting presence status comprises an instant messenger session (col. 2, lines 44-47; col. 9, lines 40-49, col. 13, lines 1-6).

22. It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings to determine an activity comprising of an instant messenger session. The motivation for the suggested combination is that Boni's teachings would allow determination of activity based on different factors including an active session of instant messaging.

23. As per claims 8, 22, and 36, Barsness teaches the method, computer-accessible storage medium, and the system as recited in claims 1, 15, and 29, wherein said computer system activity is configurable by a user from a plurality of types of computer system activity (col. 11, lines 20-21. Keyboard input, mouse input. It is inherent that a user can set up inputs for the keyword and/or mouse.).

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24. As per claims 9, 23, and 37, Barsness teaches the method, computer-accessible storage medium, and the system as recited in claims 1, 15, and 29, wherein said activity threshold is configurable by a user (col. 9, lines 50-59. Profile including activity time can be edited by user.).

25. As per claims 12, 26, and 40, Barsness teaches the method, computer-accessible storage medium, and the system as recited in claims 1, 15, and 29, further comprising:

storing schedule information corresponding to a given user, wherein said schedule information is indicative of an activity status of said given user at a given time (col. 9, lines 15-22. Calendar information. col. 11, lines 59-67. Calendar indicates whether there is a conflict, e.g. event, at day/time. );

querying said schedule information (col. 11, lines 59-62. Call calendar application.); and

if a current presence state of said instant messenger does not correspond to said activity status indicated by said schedule information, assigning a different presence state that corresponds to said activity status in response to said querying, wherein said current presence state and said different presence state each correspond to said given user (col. 12, lines 25-32. If there is a “calendar conflict”, set status to “inactive” or a similar message.).

26. As per claims 13, 27, and 41, Barsness teaches the method, computer-accessible storage medium, and the system as recited in claims 1, 15, and 29, further comprising:

receiving an instant messaging operation directed to a given user, wherein said given user is not offline (col. 12, lines 56-60. Incoming request.);

determining said presence state of said instant messenger in response to receiving said instant messaging operation (col. 13, lines 2-9. Checks for availability information if recipient is logged on.); and

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selectively processing said instant messaging operation dependent upon said presence state in response to said determining (col. 13, lines 11-16. If intended recipient is “unavailable”, a warning message is sent to the sender. Message is placed in the queue.).

27. As per claims 14, 28, and 42, Barsness teaches the method, computer-accessible storage medium, and the system as recited in claims 1, 15, and 42, further comprising:

storing an instant messaging operation associated with a given presence state of said instant messenger, wherein said given presence state corresponds to a given user (fig. 9; col. 13, lines 5-10. If recipient is unavailable, put message in queue.);

detecting a transition to said given presence state subsequent to said storing (col. 13, lines 2-8. Check status.); and

performing said instant messaging operation in response to said detecting (col. 9-16. If recipient is available, forward message.).

28. Claims 6-7, 20-21, 34-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barsness and Boni, in view Burnley et al. US Publication #2007/0061450 (Burnley hereinafter).

29. As per claim 6, 20, and 34, Barsness does not specifically teach the method, computer-accessible storage medium, and the system as recited in claims 1, 15, and 29, wherein said computer system activity comprises processor utilization.

30. Burnley teaches a system for tracking and collecting utilization data, wherein the system tracks processor utilization (Paragraphs 0051; 0127).

31. It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings to determine activity comprising of processor utilization. The motivation for the suggested combination is that Burnley's teachings would improve the suggested system by allowing

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determination of client activity to determine status based on different factors including processor utilization.

32. As per claims 7, 21, and 35, Barsness does not specifically teach the method, computer-accessible storage medium, and the system as recited in claims 6, 20, and 34, wherein said processor utilization further comprises a foreground processor utilization corresponding to activity of foreground computer system processes and a background processor utilization corresponding to activity of background computer system processes, and wherein said activity threshold further comprises a foreground process threshold corresponding to said foreground processor utilization.

33. Burnley teaches a system for tracking and collecting utilization data, wherein the system tracks foreground processor utilization corresponding to activity of foreground computer system processes (Paragraphs 0056. Specify whether focused application is active.) and a background processor utilization corresponding to activity of background computer system processes (Paragraph 0077. Track each opened application.), and wherein said activity threshold further comprises a foreground process threshold corresponding to said foreground processor utilization (Paragraphs 0056. Determine active focused application when buffer has changed.).

34. It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings for system to track foreground processor utilization corresponding to activity of foreground computer system processes and a background processor utilization corresponding to activity of background computer system processes, and wherein said activity threshold further comprises a foreground process threshold corresponding to said foreground processor utilization. The motivation for the suggested combination is that Bumley's teachings would improve the suggested system by allowing determination of client activity to determine status based on different factors, including focused and

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unfocused application utilizations.

35. Claims 10-11, 24-25, 38-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barsness and Boni, in view of Matsumoto et al. US Publication #2001/0025314 (Matsumoto hereinafter).

36. As per claims 10, 24, and 38, Barsness teaches the method, computer-accessible storage medium, and the system as recited in claims 1, 15, and 29, wherein said activity threshold further comprises a threshold time (col. 9, lines 50-59. Activity time.). Barsness does not specifically teach wherein determining whether said level of computer system activity exceeds an activity threshold further comprises determining whether the duration of said level of computer system activity exceeds said threshold time.

37. Matsumoto teaches a system for determining presence state, wherein the system determines when active duration of a running application exceeds a predetermined time (Paragraph 0064).

38. It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings to determine whether active duration of a running application exceeds a predetermined time. The motivation for the suggested combination is that Matsumoto's teachings would increase the methods in determining activity in the suggested system and setting status corresponding to the activity.

39. As per claims 11, 25, and 39, Barsness teaches the method, computer-accessible storage medium, and the system as recited in claims 10, 24, and 38, wherein said threshold time is configurable by a user (col. 9, lines 50-59. Profile including activity time can be edited by user.).

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### **Conclusion**

40. A shortened statutory period for reply to this Office action is set to expire THREE MONTHS from the mailing date of this action.

41. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joshua Joo whose telephone number is 571 272-3966. The examiner can normally be reached on Monday to Thursday 8AM to 5PM and every other Friday.

42. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Flynn can be reached on 571 272-1915. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

43. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/J. J./

Examiner, Art Unit 2154

/Nathan J. Flynn/

Supervisory Patent Examiner, Art Unit 2154